

*Access to bridge
March*

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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT GRANTED BY
THE CITY OF BELLEVUE TO BELLEFIELD
DEVELOPMENT COMPANY

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY and
SLADE GORTON, ATTORNEY GENERAL,

Appellants,

v.

CITY OF BELLEVUE and BELLEFIELD
DEVELOPMENT COMPANY,

Respondents.

SHB No. 77-13

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of a substantial development permit issued by the City of Bellevue for the construction of an access road and bridge came on for formal hearing before W. A. Gissberg, Chairman, Dave J. Mooney, Robert F. Hintz and Gerald D. Probst on July 12, 1977, in Lacey, Washington.

Robert V. Jensen appeared for appellants Department of Ecology

1 and Slade Gorton, Attorney General. Robert Baronsky represented
2 respondent permittee Bellefield Development Company; City Attorney
3 Lee Kraft represented respondent City of Bellevue.

4 Parties, through their counsel, stipulated to the record, i.e.,
5 exhibits to be considered by the Board in this matter. Having
6 reviewed such exhibits, having heard oral argument by counsel, having
7 read counsels' hearing memoranda, the Shorelines Hearings Board makes
8 the following

9 FINDINGS OF FACT

10 I.

11 On August 15, 1970, Bellefield Development Company received
12 approval from the City of Bellevue for a planned unit development
13 (P.U.D.) to be known as the Bellefield Office Park. The P.U.D.
14 encompasses approximately 150 acres which has been under development
15 in stages or "phases" since 1970. The project occupies portions of
16 the Mercer Slough marsh and as such is located on a "wetland" subject
17 to the requirements of the Shoreline Management Act (SMA).

18 II.

19 The P.U.D. site is bounded generally by S. E. 6th Street on the
20 north, 112th S.E. Parkway on the west, a public nature park
21 (Bellefield Park) on the south and 118th Avenue S.E. (a frontage road
22 paralleling Interstate Highway 405) on the east. The Wilburton
23 Interchange is located on the northeast corner of the planned unit
24 development site. The Mercer Slough channel, redredged and developed
25 by the respondent permittee to a width of approximately 100', bisects
26 the planned unit development area.

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1 III.

2 Before the permit requirements of the SMA became applicable thereto
3 in 1973, the P.U.D. area west of the Mercer Slough channel was developed
4 through construction of a new loop canal, a bridge access from 112th S.E.
5 Parkway, a roadway system, sewer and water systems, four office buildings,
6 and extensive site development. Since 1973 additional construction
7 has been authorized west of the channel under six separate substantial
8 development permits, specifically:

- 9 1) four buildings totalling 119,500 square feet
10 2) second bridge and access road, public
11 restaurant building
12 3) office building with related parking
13 4) street connecting Wilburton Interchange with
14 112th S.E. Parkway
15 5) portion of city water system
16 6) office building with related parking

17 In each case the City of Bellevue determined that the authorized
18 construction would have "no significant impact" on the environment.
19 No objection was raised by the Department of Ecology or any other
20 party to such determinations.

21 IV.

22 The permit at issue in this appeal was granted by the City of
23 Bellevue on April 1, 1977 and authorizes the construction of a third
24 access road and bridge across the Mercer Slough. The road would join the
25 developed portion west of the channel to 118th Avenue S.E. While the
26 road at issue is proposed by the permittee to provide additional access and
27 fire protection for existing development, it is uncontroverted that this
road would also be the access road for the multi-family residential
development which had been identified and contemplated for the southeast
portion of the site under the P.U.D. approval in 1970.

V.

The Environmental Checklist prepared and submitted by the Bellefield Development Company on December 15, 1976, the supplementary information requested and received by the environmental officer, and the Declaration of Non-Significance issued by the City of Bellevue on March 18, 1977 were all limited in their scope to an assessment of direct environmental impacts which could result from construction of the access road and bridge. No assessment of potential impacts from construction of any multi-family residential units which would be served by the access road was made or documented by the city in its review of the instant substantial development permit notwithstanding the facts that the road and the proposed condominiums are functionally related and construction of the road is a prerequisite to the condominium development.

VI.

Any Conclusion of Law herein recited which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Shorelines Hearings Board comes to these

CONCLUSIONS OF LAW

I.

Final guidelines for the interpretation and implementation of the State Environmental Policy Act of 1971 (SEPA) were adopted by the Council on Environmental Policy (CEP) on December 12, 1975 and became effective January 16, 1976. The provision of these guidelines relevant to the instant appeal is WAC 197-10-060 which provides:

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1 (1) The proposal considered . . . by the
2 lead agency during the threshold determin-
3 ation and EIS preparation, shall be the
4 total proposal including its direct and
5 indirect impacts. . . .

6 (2) The total proposal is the proposed
7 action, together with all proposed activity
8 which is functionally related to it. Future
9 activities are functionally related to the
10 present proposal if:

11 (a) The future activity is an expansion of
12 the present proposal, facilitates operation of
13 the present proposal or is necessary thereto; or

14 (b) The present proposal facilitates or is
15 a necessary prerequisite to future activities.

16 (3) The impacts of a proposal include its
17 direct impacts as well as its reasonably anticipated
18 indirect impacts. Indirect impacts are those which
19 result from any activity which is induced by a
20 proposal. These include, but are not limited
21 to, consideration of impacts resulting from growth
22 induced by the proposal, or the likelihood that
23 the present action will serve as a precedent for
24 future actions. . . .

25 (5) For proposed projects, such as highways,
26 streets, pipelines or utility lines or systems
27 where the proposed action is related to a large
28 existing or planned network, the lead agency may
29 at its option treat the present proposal as the
30 total proposal, or select only some of the future
31 elements for present consideration in the threshold
32 determination and EIS. These categorizations shall
33 be logical with relation to the design of the
34 total system or network itself, and shall not be
35 made merely to divide a larger system into exempted
36 fragments. (Emphasis added.)

37 II.

38 Respondents contend that WAC 197-10-060(5) supports the City
39 of Bellevue's not including in their assessment of environmental
40 impacts those impacts which would result from construction of the
41 multi-family residential units, i.e., the city opted in this instance
42 to "treat the present proposal as the total proposal."

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1 Subsection (5) does permit a lead agency in certain narrowly
2 defined situations to narrow the scope of a "total proposal" and in
3 effect to consider the environmental impacts segment by segment.
4 However the proposal at issue in this appeal is not the type
5 of project contemplated or identified in WAC 197-10-060(5). This
6 language specifically¹ detailed the types of projects which could be
7 segregated for procedural SEPA compliance. These projects all involve
8 a linear type project (e.g. highways, pipelines) or planned "network"
9 of logically staged construction which could extend over considerable
10 distances over extended periods of time.

11 The elements of the total proposal sought to be separated in this
12 appeal are (1) an access road and bridge and (2) multi-family residential
13 units to be constructed over thirty-two undeveloped acres. The Board
14 concludes that the city erred in applying WAC 197-10-060(5) to the
15 instant matter. The Board further concludes that given the provisions
16 of WAC 197-10-060 which are applicable, it was clearly erroneous for
17 the city to fail to consider the environmental impacts of the planned
18 condominium complex in making its threshold determination. This
19 ruling goes no further than to identify the range of impacts which
20 must be considered by the City of Bellevue in making its threshold
21 determination. The Board does not intend to speculate on what that
22 threshold determination will be or should be.

23
24 1. The use of the words "such as" in the provision as opposed
25 to "such as but not limited to" must be construed as an intent by
26 the draftsmen to limit the circumstances in which lead agencies
27 could exercise the described option.

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1 III.

2 It should be noted that all court cases cited by the parties
3 in this matter predated the effective date of the SEPA Guidelines
4 and represent an effort by the courts to interpret the State
5 Environmental Policy Act of 1971 in the absence of any published
6 guidelines or model SEPA ordinances. With regard to the proper scope
7 of a proposal and the range of its impacts which must be considered
8 by a lead agency in making any threshold determination, WAC 197-10-060
9 is now applicable and dispositive.

10 IV.

11 Any Finding of Fact which should be deemed a Conclusion of Law
12 is hereby adopted as such.

13 From these Conclusions of Law the Board enters this

14 ORDER

15 The substantial development permit granted to the Bellefield
16 Development Company for construction of an access road and bridge
17 is vacated; this matter is remanded to the City of Bellevue for
18 further action consistent with this opinion.

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1 DATED this 22nd day of July, 1977.

2 SHORELINES HEARINGS BOARD

3 
4 W. A. GISSBERG, Chairman

5 
6 ROBERT F. HINTZ, Member

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8 DAVE J. MOONEY, Member

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10 GERALD D. PROBST, Member

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